

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MIRANDA BUTLER,

Plaintiff,

vs.

DEPARTMENT OF HUMAN SERVICES
and JULIE H. HOLLY,

Defendants.

Case No. 17-10458

HON. AVERN COHN

ORDER
OVERRULING PLAINTIFF'S OBJECTIONS (Doc. 23)
AND ADOPTING REPORT AND RECOMMENDATION (Doc. 17)
AND DISMISSING CASE
AND DENYING PENDING MOTIONS AS MOOT

I.

This is a pro se case under 42 U.S.C. § 1983. Plaintiff is suing the Department of Human Services and Julie H. Holly. The matter was referred to a magistrate judge for pretrial proceedings. (Doc. 6). The magistrate judge issued a report and recommendation (MJRR), recommending that the case be dismissed under 28 U.S.C. § 1915(e)(2)(B).¹ (Doc. 17).

Before the Court are plaintiff's objections to the MJRR. (Doc. 23). For the reasons that follow, the objections are **OVERRULED**, the MJRR is **ADOPTED**, and the case is **DISMISSED** and all pending motions are **DENIED AS MOOT**.

¹In light of this recommendation, the magistrate judge also recommends that plaintiff's pending motions be denied as moot.

II.

A district court must conduct a de novo review of the parts of a magistrate judge's report and recommendation to which a party objects. 28 U.S.C. § 636(b)(1). The district "court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate" judge. *Id.* The requirement of de novo review "is a statutory recognition that Article III of the United States Constitution mandates that the judicial power of the United States be vested in judges with life tenure." United States v. Shami, 754 F.2d 670, 672 (6th Cir. 1985).

III.

Plaintiff makes a sole objection. She contends that the magistrate judge did not have the authority to rule on the complaint and, more particularly, consider her motion to amend the complaint.

The order of reference to the magistrate judge cites 28 U.S.C. § 636 (b)(1)(A) and (b)(1)(B). These sections provide:

(b)(1) Notwithstanding any provision of law to the contrary--

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial¹ relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

Plaintiff relies on subsection (b)(1)(A) to argue that her motion to amend is a “judgment on the pleadings” which is excluded from review by a magistrate judge. Plaintiff’s reliance on subsection (b)(1)(A) is misplaced. First, plaintiff’s motion to amend is not a motion for judgment on the pleadings. Second, even if it were so considered, under subsection (b)(1)(B), a magistrate judge may make a report and recommendation on any of the motions excluded in subsection (b)(1)(A), including a motion for judgment on the pleadings. Moreover, the magistrate judge recommended that the complaint be dismissed because it fails to state a proper claim against either defendant.

As to the substance of the magistrate judge’s recommendation, the Court agrees that the complaint does not state a viable claim and must be dismissed under 28 U.S.C. § 1915(e)(2)(B).

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: 10/10/2017
Detroit, Michigan